

CHAPTER 333

TRADE NAMES, MARKS, AND INSIGNIA

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333.001 DEFINITIONS.

Subdivision 1. As used in sections 333.001 to 333.06, the following terms shall have the meanings given, unless the context clearly indicates that a different meaning is intended.

Subd. 2. **Person.** "Person" means one or more natural persons; a partnership; a limited partnership; a corporation, including a foreign, domestic, or nonprofit corporation; a trust; or any other business organization.

Subd. 3. **True name.** "True name" means the true full name of the natural person, if a proprietorship; the true full name of each partner, if a partnership; the full corporate name as stated in its articles, if a corporation; the full name of the limited partnership, if a limited partnership; the true full name of at least one trustee, if a trust; or the true full name of at least one beneficial owner, if any other form of business organization.

Subd. 4. **"Address"** means the full residential address of each natural person, trustee or beneficial owner, or corporation, included in subdivision 3, and the address of the principal place in Minnesota where the business is conducted or transacted.

Subd. 5. **"Executed"** means executed by one natural person, if a proprietorship; by a general partner if a general or limited partnership; by an officer, if a corporation; by a trustee, if a trust; or by a beneficial owner or managing agent, if some other form of business organization.

History: 1978 c 698 s 3; 1982 c 496 s 6,7; 1984 c 618 s 37,38

333.01 COMMERCIAL ASSUMED NAMES; CERTIFICATE.

No person shall hereafter carry on or conduct or transact a commercial business in this state under any designation, name, or style, which does not set forth the true name of every person interested in such business unless such person shall file in the office of the secretary of state, a certificate setting forth the name and business address under which the business is conducted or transacted, or is to be conducted or trans-

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acted, and the true name of each person conducting or transacting the same, with the address of such person. The certificate shall be executed by one of the persons conducting, or intending to conduct, the business. The certificate shall be published after it has been filed with the secretary of state in a qualified newspaper in the county in which the person has a principal or registered office for two successive issues.

History: (7346) 1911 c 271 s 1; 1959 c 658 s 1; 1978 c 698 s 2; 1984 c 618 s 39; 1988 c 682 s 43

333.02 FILING OF CERTIFICATE.

Persons conducting or transacting any business under any designation, name, or style referred to in section 333.01 shall, before commencing such business, file such certificate and shall publish the certificate in the manner prescribed in section 333.01.

History: (7347) 1911 c 271 s 2; 1959 c 658 s 2; 1984 c 618 s 40

333.03 [Repealed, 1978 c 698 s 9]

333.035 AMENDMENT OF CERTIFICATE.

Within 60 days after the occurrence of any event which makes any statement in the last previous statement filed incorrect, an amended certificate shall be filed and the amended certificate shall be published by the person conducting the business in the same manner as provided by section 333.01.

History: 1978 c 698 s 4; 1984 c 618 s 41

333.04 SECRETARY OF STATE; DUTIES, FEES.

The secretary of state shall keep an alphabetical list of assumed names filed pursuant to section 333.01 after August 1, 1978, together with trademarks, service marks, certification marks or collective marks filed with the secretary of state and issued pursuant to sections 333.20 and 333.21, and for the indexing and filing of the certificates shall charge the applicant a fee prescribed by section 333.055. A copy of such certificate, duly certified to by the secretary of state, shall be presumptive evidence in all courts of law in this state of the facts therein contained.

History: (7349) 1911 c 271 s 4; 1959 c 658 s 4; 1978 c 698 s 5

333.05 [Repealed, 1978 c 698 s 9]

333.055 TERM OF CERTIFICATE; RENEWAL, NOTICES, FEES.

Subdivision 1. Filing of a certificate hereunder shall be effective for a term of ten years from the date of filing and upon application filed within the six-month period prior to the expiration of such term or a renewal thereof, on a form prescribed by the secretary of state, the certificate may be renewed for additional ten-year terms. A renewal fee as specified herein, payable to the secretary of state, shall accompany the application for renewal.

The secretary of state shall notify each business holding a certificate hereunder of the necessity of renewal thereof by writing to the last known address of the business at least six months prior to the certificate's expiration date.

Subd. 2. Any assumed name certificate of record in the district courts and in force on July 1, 1978 shall continue in force without the necessity of another filing under section 333.01 until July 31, 1979, at which time all such certificates shall expire unless renewed as hereinafter provided. Any certificate may be renewed by filing an application with the secretary of state on a form prescribed by the secretary and paying the renewal fee prescribed by subdivision 3 within the six month period prior to the expiration of the certificate.

Subd. 3. The secretary of state shall charge and collect:

(a) For the filing of each certificate or amended certificate of an assumed name - \$15

(b) Certificate renewal fee - \$15.

Subd. 4. The secretary of state shall accept for filing all certificates and renewals thereof which comply with the provisions of sections 333.001 to 333.06 and which are accompanied by the prescribed fees, notwithstanding the fact that the assumed name disclosed therein may be the same as, or similar to, one or more other assumed names already filed with the secretary of state. In the event of duplication or similarity, the secretary of state shall, within 20 days after the filing, notify in writing each previously filed business holding a certificate for the assumed name or a similar assumed name, of the duplication or similarity, including in the notice the name and last known address of the person so filing. The secretary of state shall not accept for filing a certificate that discloses an assumed name that is the same as, or deceptively similar to, a corporate, or limited partnership name in use or reserved in this state by another or a trade or service mark registered with the secretary of state, unless there is filed with the certificate a written consent, court decree of prior right, or affidavit of nonuser of the kind required by section 302A.115, subdivision 1, clause (d). The secretary of state shall determine whether a name is "deceptively similar" to another name for purposes of this subdivision.

History: 1978 c 698 s 6; 1980 c 396 s 1; 1980 c 509 s 129; 1981 c 270 s 137; 1983 c 301 s 190; 1984 c 618 s 42; 1987 c 404 s 173; 1988 c 682 s 44,45

333.06 PLEADING FAILURE TO FILE CERTIFICATE; COSTS.

If any person conducting a business contrary to the terms of sections 333.001 to 333.06 shall, prior to the filing of the certificate therein prescribed, commence a civil action, including an action to recover possession of real property in any court of this state on account of any contract made by, or transaction had on behalf of the business, the defendant may plead such failure in abatement of the action; and all proceedings had in the action shall thereupon be stayed until the certificate provided for by sections 333.001 to 333.06 is duly filed, and if the defendant prevails in the action, the defendant shall also be entitled to tax \$250 costs, in addition to such other statutory costs as may be allowed by law, and, if the defendant does not prevail in the action, the defendant shall be entitled to deduct \$250 from the judgment otherwise recoverable therein and if a judgment for money is not otherwise recoverable therein, the defendant shall be entitled to tax \$250 costs. If such a person defends against a civil action, the plaintiff shall be entitled to tax \$250 costs, regardless of which party prevails upon the merits.

History: (7352) 1911 c 271 s 7; 1959 c 658 s 5; 1978 c 698 s 7; 1984 c 618 s 43; 1986 c 444; 1988 c 682 s 46

333.07 LODGE AND SOCIETY EMBLEMS MAY BE REGISTERED.

Any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, whether incorporated or unincorporated, the principles and activities of which are not repugnant to the constitution and laws of the United States or this state, may register, in the office of the secretary of state, a facsimile, duplicate, or description of its name, badge, motto, button, decoration, charm, emblem, rosette, or other insignia, and may, by reregistration, alter or cancel the same.

History: (7352-1) 1933 c 295 s 1

333.08 APPLICATION FOR REGISTRATION.

Application for such registration, alteration, or cancellation, shall be made by the chief officer or officers of the association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society,

organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, upon blanks to be provided by the secretary of state; and such registration shall be for the use, benefit, and on behalf of all associations, degrees, branches, subordinate lodges, and auxiliaries of such association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, and the individual members and those thereafter to become members thereof, throughout this state.

History: (7352-2) 1933 c 295 s 2

333.09 SECRETARY OF STATE TO KEEP RECORD AND INDEX.

The secretary of state shall keep a properly indexed record of the registration provided for by sections 333.07 to 333.12, which record shall also show any altered or canceled registration.

History: (7352-3) 1933 c 295 s 3

333.10 DUPLICATES NOT REGISTERED.

No registration shall be granted or alteration permitted to any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, having a name, badge, motto, button, decoration, charm, emblem, rosette, or other insignia, similar to, imitating, or so nearly resembling as to be calculated to deceive, any other name, badge, button, decoration, charm, emblem, rosette, or other insignia, already registered pursuant to the provisions of sections 333.07 to 333.12.

History: (7352-4) 1933 c 295 s 4

333.11 ISSUANCE OF CERTIFICATES.

Upon granting registration the secretary of state shall issue a certificate to the petitioners, setting forth the fact of such registration.

History: (7352-5) 1933 c 295 s 5; 1986 c 444

333.12 FEES.

The fees of the secretary of state for registration, alteration, cancellation, searches made, and certificates issued, pursuant to sections 333.07 to 333.11, shall be \$10. The fees so collected shall be paid by the secretary of state into the state treasury.

History: (7352-7) 1933 c 295 s 7; 1955 c 820 s 36; 1986 c 444

333.13 VIOLATIONS; PENALTIES.

Any person who willfully wears, exhibits, displays, prints or uses, for any purpose, the badge, motto, button, decoration, charm, emblem, rosette, or other insignia of any association or organization mentioned in section 333.07, duly registered, unless entitled to use and wear the same under the constitution and bylaws, rules, and regulations of the association or organization, is guilty of a misdemeanor; and upon conviction shall be punished by a fine of not exceeding \$100 and in default of payment committed to jail for a period of not to exceed 60 days.

History: (7351, 7352-6) 1911 c 271 s 6; 1933 c 295 s 6; 1980 c 396 s 2

333.135 IMPROPER USE OF INSIGNIA.

Every person who shall willfully wear the insignia or rosette of the military order of the Loyal Legion of the United States, or the badge or button of the Grand Army of the Republic, the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans of the World War, or of any other veterans' organization, or any

similitude thereof; or who shall willfully wear any badge, emblem, or insignia pertaining to the order of Masons, Odd Fellows, Knights of Pythias, or any other secret order or society, or any similitude thereof; or who shall use any such badge, button, or insignia to obtain aid or assistance, or who shall use the name of any such order or society for gain, unless entitled to so use the same under the constitution, bylaws, rules, and regulations of such order, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than 60 days or by a fine of not more than \$50 or by both.

History: (10462) *RL s 5167; 1921 c 235 s 1; 1927 c 397; 1986 c 444*

333.14 USE OF NAME AND MARK "AQUATENNIAL" LIMITED; PENALTY.

Any person, firm, copartnership, association, society, or corporation, except as authorized by Minneapolis aquatennial association, who shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or use in any manner the name and mark "aquatennial" of the Minneapolis aquatennial association or any other name or mark so nearly resembling the name and mark "aquatennial" as to be calculated to deceive the public with respect to the corporation, or who, except as authorized by the corporation, shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or use in any manner any other name, mark, emblem, insignia or badge, designation, or distinguishing descriptive word or phrase used by the Minneapolis aquatennial association in carrying out its purpose or any name, mark, emblem, insignia or badge, designation, or distinguishing descriptive word or phrase confusingly similar thereto, calculated to deceive the public with respect to the corporation, or who, except as authorized by the corporation, shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or use the corporate name of the corporation, or a name so nearly resembling it as to be calculated to deceive the public with respect to the corporation, shall be guilty of a misdemeanor.

History: *1941 c 202 s 1*

333.15 THREATENED USE MAY BE RESTRAINED.

When there shall be an actual or threatened violation of section 333.14, an application may be made to a court or justice having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, for an injunction to enjoin and restrain the actual or threatened violation; and if it shall appear to the satisfaction of the court or justice that the defendant is in fact so using or threatening to use the name and mark "AQUATENNIAL" or any other name or mark confusingly similar thereto, or any other name, mark, emblem, insignia, or badge, designation, or distinguishing descriptive word or phrase used by the corporation in carrying out its purposes or confusingly similar to any such other name, mark, emblem, insignia or badge, designation, or distinguishing descriptive word or phrase used by the corporation in carrying out its purposes, or the corporate name of the corporation or a confusingly similar name, an injunction may be issued by the court or justice enjoining and restraining such actual or threatened violation without requiring proof that any person has in fact been misled or deceived thereby.

History: *1941 c 202 s 2*

333.16 VESTED RIGHTS NOT AFFECTED.

The provisions of sections 333.14 and 333.15 shall not be deemed or construed to divest, interfere, affect, or conflict with any established or vested right or prohibit the use thereof.

History: *1941 c 202 s 3*

333.17 USE OF CERTAIN TERMS FORBIDDEN.

No person, firm, corporation or association, selling or offering for sale, any com-

modity, shall use, or cause, or permit to be used as the name or designation, or as a part of the name or designation, of any business, any of the following words, terms or expressions, viz.: "army," "navy," "marine," "coast guard," "post exchange," "government," "G.I.," "P.X.," or any other word, term, or expression denoting the United States Government, or relating to an agency or activity of the United States Government, provided however, that any person, firm, corporation or association, engaged in the manufacture or sale of marine equipment, or engaged in the business of marine insurance, may use the word "marine" as a part of its business name.

Any person, firm, corporation, or association, violating the provisions of this section is guilty of a misdemeanor.

History: 1945 c 212

333.18 TRADEMARKS AND SERVICE MARKS; DEFINITIONS.

Subdivision 1. (1) The term "trademark" as used in sections 333.18 to 333.31 means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by that person and to distinguish them from goods made or sold by others.

(2) The term "service mark" as used in sections 333.18 to 333.31 means a word, name, symbol, or device or any combination thereof adopted and used by a person to identify that person's services and to distinguish them from services of others and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising used in commerce.

(3) The term "certification mark" means a mark used upon or in connection with the products or services of one or more persons other than the owner of the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

(4) The term "collective mark" means a trademark or service mark used by the members of a cooperative, an association or other collective group or organization and includes marks used to indicate membership in a union, an association or other organization.

Subd. 2. The term "person" as used herein means any individual, firm, partnership, corporation, association, union or other organization.

Subd. 3. The term "applicant" as used herein embraces the person filing an application for registration of a mark under sections 333.18 to 333.31, the applicant's legal representatives, successors or assigns.

Subd. 4. The term "registrant" as used herein embraces the person to whom the registration of a mark under sections 333.18 to 333.31 is issued, a legal representative, successors or assigns.

Subd. 5. (1) For the purposes of sections 333.18 to 333.31, a trademark shall be deemed to be "used" in this state when it is placed in any manner on the goods or their containers or on the tags or labels affixed thereto or on displays associated with the goods and such goods are sold or otherwise distributed in this state.

(2) For the purpose of sections 333.18 to 333.31, a service mark shall be deemed to be "adopted and used" when it is adopted and used in connection with the rendering, selling, or advertising of services in this state to identify the services of one person and distinguish them from the services of others, and such services are rendered.

History: 1959 c 600 s 1; 1986 c 444

333.19 UNREGISTRABLE MATTER; COLLECTIVE AND CERTIFICATION MARKS.

Subdivision 1. A trademark or service mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

- (1) consists of or comprises immoral, deceptive or scandalous matter; or
- (2) consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or
- (3) consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or
- (4) consists of or comprises the name, signature or portrait of any living individual, except with written consent; or
- (5) consists of a mark which, (a) when applied to the goods or used to identify the services of the applicant, is merely descriptive or deceptively misdescriptive of them, or (b) when applied to the goods or used to identify the services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (c) is primarily merely a surname provided, however, that nothing in this subsection (5) shall prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or used to identify the services, proof of substantially exclusive and continuous use thereof as a mark by the applicant in this state for the five years next preceding the date of the filing of the application for registration; or
- (6) consists of or comprises a mark which so resembles a mark registered in this state or a corporate or limited partnership name in use or reserved in this state by another, or a mark or trade name previously used in this state by another and not abandoned, as to be likely, when applied to the goods or used to identify the services of the applicant, to cause confusion or mistake or to deceive. The secretary of state may require affidavits by both the applicant and by the holder of the previously registered name or mark in making this determination.

Subd. 2. Subject to the provisions relating to the registration of trademarks and service marks, so far as they are applicable, collective and certification marks, used in this state, shall be registrable under sections 333.18 to 333.31, in the same manner and with the same effect as are trademarks and service marks, by persons, and nations, states, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection provided herein in the case of trademarks or service marks, except when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used.

History: 1959 c 600 s 2; 1981 c 270 s 138; 1984 c 618 s 44; 1986 c 444

333.20 APPLICATION; FORM, SIGNATURE, SPECIMEN OF MARK, FEE.

Subdivision 1. Subject to the limitations set forth in sections 333.18 to 333.31, any person who adopts and uses a trademark or a service mark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth, but not limited to, the following information:

- (1) the name and business address of the person applying for such registration; and, if a corporation, the state of incorporation,
- (2) the goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall,
- (3) the date when the mark was first used in this state by the applicant or a predecessor in business, and
- (4) the applicant's statement of belief that the applicant is the owner of the mark and that no other person has the right to use such mark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

Subd. 2. The application shall be signed by the applicant or by a member of the firm or an officer of the corporation or association applying.

Subd. 3. The application shall be accompanied by a specimen or facsimile of such mark in triplicate.

Subd. 4. The application for registration shall be accompanied by a filing fee of \$25, payable to the secretary of state; provided, however, that a single credit of \$10 shall be given each applicant applying for reregistration of a mark hereunder for each \$10 filing fee paid by applicant for registration of the same trademark prior to the effective date of sections 333.18 to 333.31.

History: 1959 c 600 s 3; 1969 c 1148 s 63; 1983 c 301 s 191; 1986 c 444; 1988 c 682 s 47

333.21 CERTIFICATE OF REGISTRATION, ISSUANCE, EVIDENTIARY EFFECT.

Subdivision 1. Upon a finding by the secretary of state that the mark and application for registration comply with the requirements of sections 333.18 to 333.31, and that the class indicated, if any, in which the mark is to be registered is not clearly incorrect, the secretary of state shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the secretary of state and the seal of the state, and shall show the registrant's name and business address and, if a corporation, the state of incorporation, the date claimed for the first use of the mark in this state, the class of goods or services and a description of the goods or services in connection with which the mark is used, a reproduction of the mark, the registration date and the term of the registration.

Subd. 2. Any certificate of registration issued by the secretary of state under the provisions hereof or a copy thereof duly certified by the secretary of state shall be admissible in evidence as competent and sufficient proof of the registration of such mark, in any action or judicial proceedings in any court of this state and shall be prima facie evidence of registrant's ownership and exclusive right to use the mark on or in connection with the goods or services described in the certificate.

History: 1959 c 600 s 4; 1984 c 618 s 45; 1986 c 444

333.22 TERM OF REGISTRATION; RENEWAL, NOTICE, FEE.

Subdivision 1. Registration of a mark hereunder shall be effective for a term of ten years from the date of registration and, upon application filed within six months prior to the expiration of such term or a renewal thereof, on a form to be furnished by the secretary of state, the registration may be renewed for additional ten-year terms provided that the mark is in use by the applicant at the time of the application for renewal and that there are no intervening rights. A renewal fee of \$12 payable to the secretary of state shall accompany the application for renewal of the registration.

Subd. 2. The secretary of state shall notify each registrant of a mark hereunder of the necessity of renewal thereof by writing to the last known address of the registrant approximately six months prior to the registration's expiration date.

Subd. 3. Any registration in force on the date on which Laws 1959, chapter 600 shall become effective, shall expire two years after and may be renewed by filing an application with the secretary of state on a form furnished by the secretary of state and paying the aforementioned renewal fee therefor within six months prior to the expiration of the registration provided the mark is in use at the time of application for renewal and there are no intervening rights.

Subd. 4. The secretary of state shall, within six months after the date on which Laws 1959, chapter 600 shall become effective notify all registrants of trademarks under previous acts of the date of expiration of such registrations, unless renewed in accordance with the provisions of sections 333.18 to 333.31, by writing to the last known address of the registrants.

History: 1959 c 600 s 5; 1969 c 1148 s 64; 1986 c 444; 1988 c 682 s 48

333.23 CONVEYANCES OF MARKS; RECORDATION, FEE, NECESSITY.

The secretary of state shall record written conveyances of any mark along with that part of the goodwill of the business in connection with which the mark is used, and of the corresponding application or registration which is presented for recording along with a payment of a fee of \$5 and shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under sections 333.18 to 333.31 shall be void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of state within three months after the date thereof or prior to such subsequent purchase.

History: 1959 c 600 s 6; 1969 c 1148 s 65; 1986 c 444; 1988 c 682 s 49

333.24 SECRETARY OF STATE'S RECORD OF MARKS.

The secretary of state shall keep for public examination a record of all marks registered or renewed under sections 333.18 to 333.31 in accordance with the classification hereinafter set forth. Such record of registration shall be constructive notice of registrant's claim of ownership of the mark registered.

History: 1959 c 600 s 7

333.25 CANCELLATION OF MARKS.

Subdivision 1. The secretary of state shall cancel from the register:

(1) after two years from the effective date of Laws 1959, chapter 600, all registrations under prior acts which are not renewed in accordance with sections 333.18 to 333.31;

(2) any registration concerning which the secretary of state shall receive a voluntary request for cancellation thereof from the registrant;

(3) all registrations granted under sections 333.18 to 333.31 and not renewed in accordance with the provisions thereof;

(4) in compliance with an order of a district court, any registration concerning which the court shall find:

- a. that the registered mark has been abandoned,
- b. that the registrant is not the owner of the mark,
- c. that the registration was granted improperly,
- d. that the registration was obtained fraudulently,

e. that the registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person previously in this state or in the United States Patent Office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that should the registrant prove that the registrant is the prior user of the mark or the owner of a concurrent registration of the mark in the United States Patent Office covering an area including this state, the registration hereunder shall not be canceled.

(5) When a district court shall order cancellation of a registration on any ground.

Subd. 2. No registration shall be canceled after the mark has had substantially exclusive and continuous use by the registrant for five years following the registration of said mark except for the reasons set forth in subdivision 1, subsections (1), (2) and (3) and subsections (4)a, b and d thereof, or unless a mark has been registered in this state prior to use of registrant's mark or a mark has been registered in the United States Patent Office with the publication date thereof prior to the date of use of registrant's mark, which marks when used on or in connection with the goods or services of the respective registrants would be likely to cause confusion, mistake or deception, or unless the mark is the common descriptive name of any article, substance or service.

History: 1959 c 600 s 8; 1986 c 444

333.26 CLASSIFICATION SYSTEM.

For convenience of administration of sections 333.18 to 333.31, but not to limit or extend the applicant's or registrant's rights, the secretary of state shall adopt the classification system in effect in the United States Patent Office on the effective date of Laws 1959, Chapter 600, and shall revise this classification system to conform with said United States Patent Office system as and if changes are made therein. A single application for registration of a mark may include any or all goods or services with which the mark is actually being used comprised in a single class, but in no event shall a single application include goods or service with which the mark is being used which fall within different classes.

History: 1959 c 600 s 9

333.27 IMPROPER REGISTRATION; LIABILITY.

Persons who shall for themselves, or on behalf of any other person, procure the filing or registration of any mark in the office of the secretary of state under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any district court.

History: 1959 c 600 s 10; 1986 c 444

333.28 IDENTICAL OR SIMILAR MARKS; LIABILITY FOR MISUSE.

Subject to the provisions of section 333.30 any person who shall (a) use without the consent of the registrant any mark on or in connection with rendering of services, selling, offering for sale, or advertising of any goods or services, which mark is identical to or so similar to the registered mark as to be likely to cause confusion or mistake on the part of a purchaser of the goods or services or to deceive such a purchaser as to the source or origin of the goods or services; or (b) reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution of such goods or the sale or rendering of services: shall be liable to a civil action by the owner of such registered mark for any or all of the remedies provided in section 333.29, except that under subsection (b) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

History: 1959 c 600 s 11

333.29 REMEDIES.

Subdivision 1. Any district court may grant injunctions to restrain infringement of registrant's rights and may require the defendants to pay the registrant all benefits derived from and/or damages suffered by reason of such infringement. The prevailing party may, in the discretion of the court, be awarded a reasonable attorney's fee to be taxed by the court as a part of the costs and merged into the judgment.

Subd. 2. The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

History: 1959 c 600 s 12

333.30 MARKS ACQUIRED AT COMMON LAW.

Nothing herein shall adversely affect a person's rights or the enforcement of the rights in a mark acquired in good faith at any time at common law, except that the rights as against the registrant of the same or confusingly similar mark are limited to the areas of the person's use established prior to the registration date and areas in which the person's mark has become known prior to the registration date.

History: 1959 c 600 s 13; 1986 c 444

333.31 SERVICE OF PROCESS UPON NONRESIDENT REGISTRANTS.

Service in duplicate of any paper relating to a nonresident's registration under sections 333.18 to 333.31, on the secretary of state, shall constitute service on said nonresident registrant. The secretary of state shall forward one copy of such paper to said registrant at the registrant's last known address.

History: 1959 c 600 s 16; 1986 c 444

333.40 TRADEMARK; WHEN DEEMED AFFIXED.

A trademark shall be deemed to be affixed to any goods, wares, merchandise, mixture, preparation, or compound, when it is in any manner placed in or upon either the article itself, or a box, bale, barrel, bottle, case, cask, or other vessel or package, or a cover, wrapper, stopper, brand, label, or other thing in, by, or with which the goods are packed, enclosed, or otherwise prepared for sale or disposition.

History: (10345) RL s 5071

333.41 TRADEMARKS OF WORKERS' UNIONS.

When any person, or any association or union of workers, shall have adopted or used any label, trademark, term, design, device, or form of advertisement for the purpose of designating, making known, or distinguishing any product of labor as having been made, produced, prepared, packed, or put on sale by such person, association, or union, or by a member thereof, it shall be unlawful to counterfeit or imitate the same, or to use, sell, offer for sale, or in any way utter or circulate, any counterfeit or imitation of any such label, trademark, term, design, device, or form of advertisement.

History: (10346) RL s 5072; 1986 c 444

333.42 COUNTERFEITING OR DEALING IN COUNTERFEITS; HOW PUNISHED.

Every person who shall counterfeit or imitate any such label, trademark, term, design, device, or form of advertisement, or shall sell, offer for sale, or in any way utter or circulate any counterfeit or imitation thereof; or who shall keep or possess, with intent that the same shall be sold or disposed of, any product of labor to or upon which any such counterfeit or imitation is attached, affixed, or impressed; or who shall knowingly sell or dispose of any product of labor contained in any box, case, can, or package to or upon which any such counterfeit or imitation is attached, affixed, or impressed; or who shall possess, with intent that the same shall be sold or disposed of, any product of labor in any box, case, can, or package to which or upon which any such counterfeit or imitation is attached, affixed, or impressed, shall be punished by imprisonment in the county jail for not more than three months, or by a fine of not more than \$100.

History: (10347) RL s 5073; 1986 c 444

333.43 REGISTRATION.

Every such label, trademark, term, device, design, or form of advertisement may be filed for record in the office of the secretary of state on payment of a fee of \$10 each. In so filing the same, two copies, counterparts, or facsimiles thereof, shall be left with such secretary, together with a sworn statement specifying the names of the persons, association, or union in whose behalf the same is filed, the class and description of the goods or products of labor to which it is or is intended to be appropriated, that the party in whose behalf the same is filed has the sole right to its use, and that the counterparts or facsimiles filed are correct. No label, trademark, term, design, device, or form of advertisement shall be so filed or recorded which could reasonably be mistaken for one theretofore filed.

History: (10348) RL s 5074; 1955 c 820 s 49

333.44 FRAUDULENT REGISTRATION OR USE; PENALTY.

Persons who shall, for themselves, or on behalf of any other person, association, or union, procure the filing of any label, trademark, term, design, device, or form of advertisement with such secretary under the foregoing provisions by any fraudulent means, and every person who shall use the name or seal of any such person, association, or union, or officer thereof, in or with reference to the sales of goods or products of labor, not being authorized to use the same, shall be guilty of a misdemeanor.

History: (10349) *RL s 5075; 1986 c 444*

333.45 ILLEGAL USE OF CERTIFICATE OF REGISTRATION.

Such secretary shall deliver to the person, association, or union filing any such label, trademark, term, design, device, or form of advertisement such number of certificates of the record thereof as shall be applied for, on payment of a fee of \$2 for each certificate, and such certificates shall in all cases be prima facie evidence of the adoption of such label, trademark, term, design, device, or form of advertisement. Every person who, without authority of the owner thereof, shall use or display the genuine label, trademark, term, design, device, or form of advertisement of any such person, association, or union, shall be guilty of a misdemeanor.

History: (10350) *RL s 5076; 1955 c 820 s 50*

333.50 USE OF NAME AND MARK "PORTORAMA" LIMITED.

Any person, firm, copartnership, association, society, or corporation, except as authorized by the Duluth Jaycees who shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or use in any manner the name and mark "portorama" or any other name or mark so nearly resembling the name and mark "portorama" as to be calculated to deceive the public with respect to the "portorama," or who, except as authorized by the Duluth Jaycees, shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or use in any manner any other name, mark, emblem, insignia or badge, designation, or distinguishing descriptive word or phrase used by the Duluth Jaycees in carrying out its purposes relating to the "portorama" or any name, mark, emblem, insignia or badge, designation, or distinguishing descriptive word or phrase confusingly similar thereto, calculated to deceive the public with respect to the "portorama," or who, except as authorized by the Duluth Jaycees, shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or use the name "portorama," or a name so nearly resembling it as to be calculated to deceive the public with respect to the "portorama," shall be guilty of a misdemeanor.

History: 1967 *c 224 s 1*

333.51 THREATENED USE MAY BE RESTRAINED.

When there shall be an actual or threatened violation of section 333.50, an application may be made to a court having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, for an injunction to enjoin and restrain the actual or threatened violation; and if it shall appear to the satisfaction of the court or justice that the defendant is in fact so using or threatening to use the name and mark "portorama" or any other name or mark confusingly similar thereto, or any other name, mark, emblem, insignia, or badge, designation, or distinguishing descriptive word or phrase used by the Duluth Jaycees in carrying out its purposes relating to the "portorama" or confusingly similar to any other name, mark, emblem, insignia or badge, designation, or distinguishing descriptive word or phrase used by the Duluth Jaycees in carrying out its purposes relating to the "portorama," an injunction may be issued by the court enjoining and restraining the actual or threatened violation without requiring proof that any person has in fact been misled or deceived thereby.

History: 1967 *c 224 s 2*

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333.52 VESTED RIGHTS NOT AFFECTED.

The provisions of sections 333.50 and 333.51 shall not be deemed or construed to divest, interfere, affect, or conflict with any established or vested right or prohibit the use thereof.

History: 1967 c 224 s 3; 1969 c 6 s 42

333.53 USE OF NAME AND MARK OF MINNESOTA ZOOLOGICAL GARDEN LIMITED.

Any person, firm, partnership, association, society, or corporation, not authorized by the Minnesota zoological board who, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assumes, adopts or uses the name "Minnesota zoological garden", the trademark thereof or any other name or mark so nearly resembling the name "Minnesota zoological garden" or the trademark thereof as to be calculated to deceive or mislead the public with respect to the Minnesota zoological garden, or who, except as authorized by the Minnesota zoological board, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assumes, adopts or uses any other name, mark, logo, emblem, insignia or badge, designation, or distinguishing descriptive word or phrase used by the Minnesota zoological board in carrying out its purposes relating to the Minnesota zoological garden or any name, mark, logo, emblem, insignia or badge, designation, or distinguishing descriptive word or phrase confusingly similar thereto, calculated to deceive or mislead the public with respect to the Minnesota zoological garden, shall be guilty of a misdemeanor.

History: 1980 c 433 s 2

333.54 THREATENED USE MAY BE RESTRAINED.

When there is an actual or threatened violation of section 333.53, an application may be made to a court having jurisdiction to enjoin and restrain the actual or threatened violation; and if it appears to the satisfaction of the court that the defendant is in fact using or threatening to use the name "Minnesota zoological garden" or the trademark thereof or any other name or mark confusingly similar, or any other name, mark, logo, emblem, insignia or badge, designation, or distinguishing descriptive word or phrase used by the Minnesota zoological board in carrying out its purposes relating to Minnesota zoological garden or confusingly similar to any other name, mark, logo, emblem, insignia or badge, designation, or distinguishing descriptive word or phrase used by the Minnesota zoological board in carrying out its purposes relating to the Minnesota zoological garden, the court may enjoin and restrain the actual or threatened violation without requiring proof that any person has in fact been misled or deceived thereby.

History: 1980 c 433 s 3